IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 241 OF 2005

M/S. SILVA PEREIRA ....Petitioner

Versus

SHRI NAROTTAM JADHAVJI THAKKAR AND ANR ....Respondents

Mr. S.G. Bhobe,Advocate for the Petitioner.
Mr. P.A. Kamat, For R. 1 and 2.

Coram:- SMT. RANJANA DESAI, J.

Date:- 21st June, 2006

P.C.:

In this petition, the petitioner has challenged two Orders dated 7.12.04 passed by the Civil Judge, Senior Division at Panaji in Special Civil Suit No. 165/90/A.

2. The petitioner is the original plaintiff and the respondents are the defendants. The petitioner filed a suit against the defendants seeking a declaration that the agreement dated 30.10.1989 executed in favour of the defendants is illegal, null and void and not binding on the plaintiff. On 7.12.04 Advocate Aga holding for Advocate Vaz for the plaintiff was present in the Court. He filed an application seeking time. It was stated in the application that talks of settlement are going on between the parties; that the plaintiff has given a draft of the consent terms to the defendants for approval; that the defendants were out of station and as such could not finalise the consent terms and therefore some time may be granted for settlement. The learned Judge dismissed the application holding that the matter was protracted by both the parties on one count or the other for settlement. He has further observed that despite giving an opportunity, the parties have not settled the matter and therefore the proposal of

settlement of the matter is not genuine. He further observed that not even draft settlement was annexed to the petition to show the intention of the parties to settle the matter. In the roznama of the said date, the learned Judge made a noting that as the matter is fixed for evidence and since the plaintiff is not ready to proceed with the case, the suit is dismissed for non-prosecution. These two orders are challenged in the petition.

3. I have heard learned counsel for the parties. Learned counsel for the petitioner contended that the plaintiff and the defendants were in fact exploring the possibility of settlement and consent terms were exchanged. In the application which was presented before the trial Court, it was specifically stated that the plaintiff had given draft settlement for approval and as the defendants were out of station, the plaintiff could not finalise the consent terms. It was therefore wrong on the part of the learned Judge to observe that the plaintiff is not ready to proceed with the case. The learned counsel also urged that the roznama which is annexed to the petition does not indicate that the parties were consistently obtaining adjournments and are interested in procrastinating the litigation. He submitted that grave harm would be caused to the petitioner if the impugned order is not set aside.

4. In my opinion, in the circumstances of the case and considering the fact that some talks of settlement were in fact going on, the impugned order needs to be set aside as the dismissal of the suit will undoubtedly cause great hardship to the petitioner. However, the petitioner will have to be saddled with some costs. Learned counsel for the parties have made a statement before me that since no settlement is possible they would proceed with the suit and ensure that the suit is disposed of expeditiously. They have also stated that they would not unnecesarily ask for adjournments. In view of this, I pass the following Order :-

O R D E R

5. Both the orders dated 7.12.04 which are impugned in this Writ

Petition are set aside. Special Civil Suit No.165/90/A is restored to the file of Civil Judge S.D., Panaji on condition that the petitioner pays a sum of Rs.5000/- to the Goa State Legal Services Authority. It is made clear that payment of costs shall be condition precedent for restoration of the suit. On the suit being restored, the parties shall endeavour to get the suit disposed of at the earliest. Parties are expected not to ask for unnecessary adjournments.

Writ Petition disposed of.

SMT. RANJANA DESAI, J.

sl.